

E-Filed on 05/08/07

**DIAMOND MCCARTHY LLP**

909 Fannin, Suite 1500  
Houston, Texas 77010  
Telephone (713) 333-5100  
Facsimile (713) 333-5199

Allan B. Diamond, TX State Bar No. 05801800  
Email: adiamond@diamondmccarthy.com  
Eric D. Madden, TX State Bar No. 24013079  
Email: emadden@diamondmccarthy.com

Special Litigation Counsel for USACM Liquidating Trust

**LEWIS AND ROCA LLP**

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Telephone (702) 949-8320  
Facsimile (702) 949-8321

Susan M. Freeman, AZ State Bar No. 004199  
Email: sfreeman@lrlaw.com  
Rob Charles, NV State Bar No. 006593  
Email: rcharles@lrlaw.com

Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS,  
LLC,

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,

USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**MOTION FOR ORDER REQUIRING  
DAVID M. BERKOWITZ TO  
APPEAR FOR EXAMINATION  
PURSUANT TO FEDERAL RULE  
OF BANKRUPTCY PROCEDURE  
2004**

[No hearing required]

Pursuant to Federal Rule of Bankruptcy Procedure 2004, the USACM Liquidating Trust (the "Trust" or "Movant") hereby moves this Court for an order requiring David M. Berkowitz ("Berkowitz") to appear, as set forth in the subpoena to be issued under Federal Rule of Bankruptcy Procedure 9016, to appear for examination at the office of Esquire

1 Deposition Services, 5703 Springfield Avenue, Laredo, Texas 78041, on a business day no  
2 earlier than ten (10) business days after the filing of this Motion and no later than June 30,  
3 2007 (or at such other mutually agreeable location, date, and time) and continuing from  
4 day to day thereafter until completed.  
5

6 This Motion is further explained in the following Memorandum.

7  
8 **Memorandum**

9 The Movant seeks information concerning various transactions and other dealings  
10 between USACM, the other debtors in the above-captioned cases (together with USACM,  
11 the “Debtors”), and the Debtors’ affiliates, subsidiaries, parents, or otherwise related  
12 entities. The Movant seeks this information to assist in the collection of the assets and the  
13 investigation of the liabilities of the Debtors.  
14

15 The requested discovery from Berkowitz is well within the scope of examination  
16 permitted under Bankruptcy Rule 2004, which includes:

17 [t]he acts, conduct, or property or . . . the liabilities and financial condition  
18 of the debtor, or . . . any matter which may affect the administration of the  
19 debtor’s estate, or to the debtor’s right to a discharge. In a . . .  
20 reorganization case under chapter 11 of the Code, . . . the examination may  
21 also relate to the operation of any business and the desirability of its  
22 continuance, the source of any money or property acquired or to be acquired  
23 by the debtor for purposes of consummating a plan and the consideration  
24 given or offered therefore, and any other matter relevant to the case or to the  
25 formulation of a plan.<sup>1</sup>  
26

27 **Conclusion**

28 Accordingly, the Movant requests that this Court enter the form of order submitted  
29 with this Motion.  
30

---

<sup>1</sup> FED.R. BANKR. P. 2004(b).

1 Dated: May 8, 2007.

2 **DIAMOND MCCARTHY LLP**

3 **LEWIS AND ROCA LLP**

4 By: /s/ Eric D. Madden  
5 Allan B. Diamond, TX 05801800 (pro hac vice)  
6 William T. Reid, IV, TX 00788817 (pro hac vice)  
7 Eric D. Madden, TX 24013079 (pro hac vice)  
8 909 Fannin, Suite 1500  
9 Houston, Texas 77010  
(713) 333-5100 (telephone)  
(713) 333-5199 (facsimile)

By: /s/ Rob Charles  
Susan M. Freeman, AZ 4199 (pro hac vice)  
Rob Charles, NV 6593  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169-5996  
(702) 949-8320(telephone)  
(702) 949-8321(facsimile)

10 *Special Litigation Counsel for USACM*  
11 *Liquidating Trust*

*Counsel for USACM Liquidating Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion has been served on May 8, 2007, by United States Mail, first class, postage prepaid and properly addressed to David M. Berkowitz at the following address:

David M. Berkowitz  
827 Union Pacific Blvd.  
PMB 71-404  
Laredo, TX 78045

/s/ Eric D. Madden  
Eric D. Madden